

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of:	Warburton)	
)	
Serial No.:	10/668,537)	
)	
Filed:	September 23, 2003)	
)	Art Unit
For:	X-RAY DEVICE COMPONENT WITH)	
	EMISSIVE INORGANIC COATING)	1775
)	
Examiner:	Elizabeth D. Ivey)	

TRANSMITTAL LETTER
For Amended Brief of Appellant

**The Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231**

Sir:

Applicant submits this paper in response to the Notice of Non-Compliant Appeal Brief that was mailed 07 December 2006 (the "Notice") in connection with the Appeal Brief filed by Applicant on November 6, 2006. (the "Appeal Brief"). Consideration of the Amended Brief of Appellant (the "Amended Brief"), submitted herewith, is respectfully requested in view of the following remarks.

I. Item 1. of the Notice

The Appeal Brief has been objected to on the grounds that the “brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.” Applicant submits that in view of the amendments reflected in the Amended Brief, the objection should be withdrawn.

Particularly, Applicant has amended the ‘Summary of the Invention’ heading to read, instead, ‘Summary of the Claimed Subject Matter.’ *Amended Brief at 2, 5.*

Further, Applicant has amended the ‘Issues’ heading to read, instead, ‘Grounds of the Rejections to be Reviewed on Appeal.’ *Amended Brief at 2, 6.*

II. Item 2. of the Notice

The Appeal Brief has been objected to on the grounds that the “brief does not contain a statement of the status of all claims...or does not identify the appealed claims.” While the Notice fails to specifically identify the purported defect, it appears that the concern raised in the Notice relates to claims 27-36. Particularly, inasmuch as those claims were added by the amendment filed June 6, 2005, those claims should be denoted in the Appeal Brief as “Previously presented” rather than “Original.” Applicant has amended the Appeal Brief accordingly. See *Amended Brief at 28-29.*

In view of the aforementioned amendment, Applicant submits that the objection should be withdrawn. If the aforementioned amendment is considered to be non-responsive to the objection raised in the Notice, Applicant respectfully requests that a clear statement be provided to Applicant as to the specific nature of the purported defect.

III. Item 4. of the Notice

The Appeal Brief has been objected to on the grounds that the “brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify...every means plus function and step plus function...and/or (2) set forth the structure ... corresponding to each claimed function...”

In view of the amendments to the Appeal Brief (see Amended Brief at 5), the objection as to the purported lack of a “...concise explanation of the subject matter defined in each of the independent claims involved in the appeal...” should be withdrawn. Applicant notes, moreover, that there are no “means plus function” limitations recited in any of the claims and, accordingly, the second part of the aforementioned objection is clearly inapposite to the Appeal Brief and should be withdrawn.

IV. Item 8. of the Notice

The Appeal Brief has been objected to on the grounds that the “brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the Examiner and relied upon by appellant in the appeal...” The Notice explains further that “The brief does not contain a evidence appendix or related proceedings appendix. If there is no evidence or related proceedings, then the indication ‘none’ should be included after each heading.” Inasmuch as 37 CFR 41.37 does not indicate that any such appendices are required where there is no evidence or related proceedings, the objection is not well founded.

Notwithstanding, the Amended Brief includes ‘Evidence’ and ‘Related Proceedings’ headings, along with the indication ‘None.’ *Amended Brief at 30-31*. Applicant thus submits that the objection should be withdrawn.

V. Item 9. of the Notice

The Appeal Brief has been objected to on the grounds that the “brief does not contain copies of the decisions ... identified in the ‘Related Appeals and Interferences’ section of the brief as an appendix thereto.

Inasmuch as the Appeal Brief plainly indicates (at 4) that there are no related appeals and interferences, there are no decisions to be identified in connection with such proceedings.

Notwithstanding, the Amended Brief includes, as noted at V. above, a ‘Related Proceedings’ heading, along with the indication ‘None.’ *Amended Brief at 31*. Applicant thus submits that the objection should be withdrawn.

VI. Item 10. of the Notice

See I. through V. above.

CONCLUSIONS

In view of the remarks set forth herein, and further in view of the corresponding amendments to the Appeal Brief (as set forth in the Amended Brief filed herewith), Appellant respectfully submits that the objections to the Appeal Brief have been overcome and should be withdrawn.

DATED this the 18th day of December, 2006.

Respectfully submitted,

/Peter F. Malen Jr./

PETER F. MALEN JR.
Attorney for Appellant
Registration No. 45,576
Customer No. 022913
Telephone No. (801) 533-9800